

In the Indiana Supreme Court

CAUSE NUMBER: 94S00- -MS-

ORDER AMENDING RULES OF PROCEDURE FOR POST-CONVICTION REMEDIES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rule PC2 of the *Indiana Rules of Procedure for Post-Conviction Remedies* is amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES OF PROCEDURE FOR POST-CONVICTION REMEDIES

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Rule PC 2. Belated ~~Notice of Appeal—Belated Motion to Correct Error—Belated Appeal~~Appeals

~~An “eligible defendant”~~Eligible defendant defined. An "eligible defendant" for purposes of this Rule is a defendant who, but for the ~~defendant's~~defendant's failure to do so timely, would have the right to challenge on direct appeal a conviction or sentence after a trial or plea of guilty by filing a notice of appeal, filing a motion to correct error, or pursuing an appeal.

Appellate court jurisdiction. Jurisdiction of an appeal under this Rule is determined pursuant to Rules 4 and 5 of the Indiana Rules of Appellate Procedure by reference to the sentence imposed as a result of the challenged conviction or sentence.

Section 1. Belated Notice of Appeal

~~Where an~~(a) Required Showings. An eligible defendant convicted after a trial or plea of guilty ~~fails~~may petition the trial court to file a timely notice of appeal, a petition for permission to file a belated notice of appeal ~~for appeal~~ of the conviction ~~may be filed with the trial court, where:~~or sentence if:

- ~~(a) the failure to file a timely notice of appeal was not due to the fault of the defendant; and~~
- ~~(b) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.~~

~~The trial court shall consider the above factors in ruling on the petition. Any hearing on the granting of a petition for permission to file a belated notice of appeal shall be conducted according to Section 5, Rule P.C. 1.~~

~~If the trial court finds grounds, it shall permit the defendant to file the belated notice of appeal, which notice of appeal shall be treated for all purposes as if filed within the prescribed period.~~

~~If the trial court finds no grounds for permitting the filing of a belated notice of appeal, the defendant may appeal such denial by filing a notice of appeal within thirty (30) days of said denial.~~

~~Section 2. Belated Motion to Correct Error.~~~~Any eligible defendant convicted after a trial or plea of guilty may petition the court of conviction for permission to file a belated motion to correct error addressing the conviction, where:~~

- ~~(a)no timely and adequate motion to correct error was filed for the defendant;~~
- ~~(b)the failure to file a timely motion to correct error was not due to the fault of the defendant;~~
- ~~and~~
- ~~(c)the defendant has been diligent in requesting permission to file a belated motion error under this rule.~~

~~The trial court shall not consider the merits of the motion, but shall determine whether there are grounds for allowing the belated motion to correct error to be filed. Any hearing on the petition shall be conducted according to Sec. 5, Rule PC 1.~~

~~If the trial court finds such grounds, it shall permit the defendant to file the motion, and the motion shall then be treated for all purposes as a motion to correct error filed within the prescribed period.~~

~~If the trial court finds no such grounds, it shall deny defendant permission to file the motion. Defendant may initiate the appeal of such a denial by the filing of a notice of appeal within thirty (30) days of the denial. Jurisdiction for such appeal shall be determined by reference to the sentence originally imposed.~~

~~Section 3. Belated Appeal.~~~~Any eligible defendant convicted after a trial or plea of guilty may petition the appellate tribunal having jurisdiction by reason of the sentence imposed for permission to file a belated appeal of the conviction where he filed a timely notice of appeal, but:~~

- ~~(a)no appeal was perfected for the defendant or the appeal was dismissed for failing to take a necessary step to pursue the appeal;~~
- ~~(b)the failure to perfect the appeal or take the necessary step was not due to the fault of the defendant; and~~
- ~~(c)the defendant has been diligent in requesting permission to pursue a belated appeal.~~

(1) the defendant failed to file a timely notice of appeal;

(2) the failure to file a timely notice of appeal was not due to the fault of the defendant; and

(3) the defendant has been diligent in requesting permission to file a belated notice of appeal under this rule.

(b) *Form of petition.* There is no prescribed form of petition for permission to file a belated notice of appeal. The petitioner's proposed notice of appeal may be filed as an Exhibit to the petition.

(c) *Factors in granting or denying permission.* If the trial court finds that the requirements of Section 1(a) are met, it shall permit the defendant to file the belated notice of appeal. Otherwise, it shall deny permission.

(d) *Hearing.* If a hearing is held on a petition for permission to file a belated notice of appeal, it shall be conducted according to Ind. Post-Conviction Rule 1(5).

(e) *Appealability.* An order granting or denying permission to file a belated notice of appeal is a Final Judgment for purposes of Ind. Appellate Rule 5.

(f) *Time for initiating appeal.*

(1) If the petition includes a proposed notice of appeal as an Exhibit, an order granting the petition shall also constitute the filing of that notice of appeal in compliance with the time requirements of App. R. 9(A).

(2) If the petition does not include a proposed notice of appeal as an Exhibit, the time for filing a notice of appeal is governed by App. R. 9(A).

Section 2. Belated Motion to Correct Error.

(a) *Required Showings.* An eligible defendant convicted after a trial or plea of guilty may petition the court of conviction for permission to file a belated motion to correct error addressing the conviction or sentence, if:

(1) no timely and adequate motion to correct error was filed for the defendant;

(2) the failure to file a timely motion to correct error was not due to the fault of the defendant; and

(3) the defendant has been diligent in requesting permission to file a belated motion error under this rule.

(b) *Merits of motion.* The trial court shall not consider the merits of the motion until it has determined whether the requirements of Section 2(a) are met.

(c) *Hearing.* Any hearing on whether the petition should be granted shall be conducted according to P-C. R. 1(5).

(d) Factors in granting or denying permission. If the trial court finds that the requirements of section 2(a) are met, it shall permit the defendant to file the motion, and the motion shall then be treated for all purposes as a motion to correct error filed within the prescribed period.

(e) Appealability of Denial of Permission. If the trial court finds that the requirements of Section 2(a) are not met, it shall deny defendant permission to file the motion. Denial of permission shall be a Final Judgment for purposes of App. R. 5.

(f) Time for initiating appeal. The time for filing a notice of appeal from denial of permission is governed by App. R. 9(A).

Section 3. Belated Perfection of Appeal.

An eligible defendant convicted after a trial or plea of guilty may petition the appellate tribunal for permission to pursue a belated appeal of the conviction or sentence if:

(a) the defendant filed a timely notice of appeal;

(b) no appeal was perfected for the defendant or the appeal was dismissed for failing to take a necessary step to pursue the appeal;

(c) the failure to perfect the appeal or take the necessary step was not due to the fault of the defendant; and

(d) the defendant has been diligent in requesting permission to pursue a belated appeal.

These amendments shall take effect January 1, 2008.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of September, 2007.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.